



September 7, 1999

Ms. Tenley A. Aldredge  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR99-2489

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127985.

Travis County (the "county") received a request for information relating to the Travis County Criminal Justice Center ("CJC"). You seek to withhold the requested information under sections 552.103, 552.107, and 552.111 of the Government Code. You have submitted representative samples of the information at issue.<sup>1</sup>

Section 552.103(a), known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be

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<sup>1</sup>In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You appear to base your section 552.103 claim on the county's receipt of various claims by subcontractors in connection with the CJC. In our opinion, such claims, which do not explicitly threaten legal action, do not establish that the county reasonably anticipates litigation related to the information at issue. Therefore, none of the information at issue may be withheld under section 552.103(a).

Section 552.107(1) protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. See also Open Records Decision No. 589 (1991) (protected information in attorney billing statements) (copy enclosed) *overruling to extent of conflict* Open Records Decision No. 304 (1982).

In our opinion, you have not established that any of the submitted information constitutes attorney advice or client confidences subject to the section 552.107 exception. We note, in particular, that we do not believe that the mere fact that an attorney is copied along with others on a memorandum from one county employee or agent to another, in itself establish that the contents of the document are confidential attorney-client communications within the ambit of section 552.107(1). Accordingly, none of the submitted information may be withheld under section 552.107.

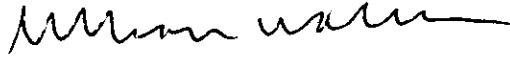
Section 552.111 excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's

policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added).

In our opinion, you have not established that any of the submitted information, which concerns the CJC improvement project, relates to policy-making functions of the county such as to be within the scope of the section 552.111 exception. Therefore, none of the submitted information may be withheld under section 552.111. The requested information must be released.

We resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 127985

Encl. Submitted documents

cc: Ms. Tracie Powell  
Austin American-Statesman  
P.O. Box 670  
Austin, Texas 78767-0670  
(w/o enclosures)